

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR DAGGETT COUNTY, STATE OF UTAH

IN THE MATTER OF THE GENERAL)
DETERMINATION OF ALL THE RIGHTS)
TO THE USE OF WATER, BOTH SUR-)
FACE AND UNDERGROUND, WITHIN THE)
DRAINAGE AREA OF THE GREEN RIVER)
ABOVE THE CONFLUENCE OF BUT IN-)
CLUDING POT CREEK, IN DAGGETT,)
SUMMIT AND UINTAH COUNTIES, UTAH.)

D E C R E E

Civil No. _____

This matter having come before the Court for trial on the 16th day of September, 1963, with the Honorable A. H. Ellett, Judge thereof, presiding, on the protests of William Allen, represented by George H. Searle, Zelph S. Calder, representing himself, Larsen Land, Livestock and Industries, a Utah Corporation, Dorothy G. Larsen, and Lewis H. Larsen, representing himself; Archie Lamb, Rodney Schofield, Lee S. and Miranda Nebeker, all represented by Lee S. Nebeker; Joe Hickey, Cal Hickey, Jewel Meeks, Bud Huseman, Keith Evans, Claude Bullock, Edgar Donahoo, represented by E. J. Skeen; Mrs. Frank Myers, Walter J. Myers; Oscar Swett, Lewis Swett, Esther R. Glenn, represented by Dwight L. King; Red Canyon Lodge, Inc., A. K. Reynolds, represented by Hugh Colton; Sylvan Arrowsmith, representing himself; and the United States of America, represented by Parker M. Nielson, Assistant United States Attorney, to the Proposed Determination of Water Rights submitted by the State Engineer on the Drainage Area of the Green River, both surface and underground, above the confluence of, but including Pot Creek, in Uintah, Daggett and Summit Counties in Utah; and upon the answers to said protests filed by the State Engineer of Utah, represented by Dallin W. Jensen, Assistant Attorney General; and the Court having heard the evidence offered by the respective

parties and being fully advised in the premises finds the water rights awarded to each party in said proposed determination are fully supported by the evidence as to the amounts and quantities of water, dates of priority, nature of use, and to the extent of use upon the lands of the parties herein, except as to the following: That there was no beneficial use of water as described under Water User's Claims Nos. 903, 1783 and 1784 for fish culture purposes prior to 1903 by Carl Searle or his predecessors in interest and the reasonable requirements for stockwatering under said claims is 45 acre-feet; that Archie Lamb, and his predecessors in interest, made a beneficial use of water as described in Water User's Claim No. 257; that the United States of America, and their predecessors in interest, have made beneficial use of the water as described in Water User's Claim No. 3025; that pursuant to stipulation of the United States of America and the Union Land Company, Water User's Claim No. 2101 in the name of Union Land Company is disallowed and Water User's Claim No. 2100 in the name of the United States of America is amended to cover the uses set forth in Claim No. 2101; that Rodney Schofield, and his predecessors, have beneficially used water from the sources described in Water User's Claims Nos. 662 and 2465 for the stockwatering of 1200 sheep; that William Allen has made a beneficial use of water as described in Water User's Claim No. 3026; that as between Zelph S. Calder and William Allen the rights to the use of water from Pot Creek under Water User's Claims Nos. 1019 and 1022 in the name of William Allen shall be as provided for in the decree of this Court dated March 20, 1959, in all other respects the rights of William Allen are as set forth in the Proposed Determination; that the Red Canyon Lodge, Inc., and A. K. Reynolds have never diverted water from the Greendale Canal for irrigation purposes, as described under Water Users Claims Nos. 2832, 2833 and 2834; provided, however,

that A. K. Reynolds is entitled to the use of .25 c.f.s. of water from the Greendale Canal for fish culture purposes as provided for in the decree of this Court in the case of Esther R. Glenn, Oscar Swett and Emma Swett, his wife, vs. Adrien K. Reynolds, Civil No. 167; that pursuant to stipulation of the parties the point of diversion under Water User's Claim No. 1219, in the name of Francis Felch, is amended to read Township 2 North instead of Township 3 North; that pursuant to stipulation of the parties the United States of America has a prior right from the sources covered by Water User's Claims Nos. 134, 142 and 143 to that of the Red Canyon Lodge, Inc., under Claim No. 627 for a total of 24.210 acre-feet and may at its discretion take the entire quantity from Ross Spring; that Svend Mogensen, under Water User's Claim No. 2757, and his predecessors in interest, have beneficially used the waters from that portion of Trail Creek Spring which is located on his property; that the United States of America has made a beneficial use of water as described under Water User's Claim No. 63; that uses of water by Larsen Land, Livestock and Industries, Lewis H. Larsen, Dorothy G. Larsen, Mrs. Frank Myers, Walter J. Myers and Sylvan Arrowsmith are as set forth in the Proposed Determination; that the United States of America and their predecessors in interest have established the right to the use of water under Water User's Claims Nos. 265, 2716, 2718 and 2719 subject to the right of Lee S. Nebeker and Miranda Nebeker to use and enjoy the right to use the water under these claims for stockwatering purposes so long as they are the holders of grazing permits on public lands where the use is made; now, therefore, by virtue of the law and the findings aforesaid, the Court orders that judgment be entered accordingly; it is, therefore,

ORDERED:

1. That Carl Searle has no right for fish culture under Water User's Claims Nos. 903, 1783 and 1784 on West Bett's Cove,

Middle Bett's Cove and South Bett's Cove, respectively. The storage under a combination of said claims is limited to 45 acre-feet of water for stockwatering purposes only. The remainder of the protest filed by Zolph S. Calder is dismissed.

2. That Water User's Claim No. 257, in the name of Archie Lamb, is allowed as follows:

The source is the State Line Spring Area; priority of 1896; the use is for irrigation, flow is 2 c.f.s. from May 1 to Oct. 15; and incidental stockwatering from Jan. 1 to Dec. 31. Point of diversion is N. 1040 ft. W. 1990 ft. from the E $\frac{1}{4}$ Cor. Sec. 17, T3N, R19E, SLB&M. Place of use is 24.10 acs. SE $\frac{1}{4}$ NE $\frac{1}{4}$, 38.93 acs. SW $\frac{1}{4}$ NE $\frac{1}{4}$, 39.2 acs. SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 22, T12N, R110W, 6th P.M. or a total of 102.23 acs. The stockwatering is for 100 sheep and 25 cattle.

3. That Water User's Claim No. 3025, in the name of the United States of America on Bull Pen Spring #3, is allowed as follows:

Source is Bull Pen Spring #3; priority, 1886; use is for stockwatering purposes with a flow of 0.035 c.f.s. from Jan. 1 to Dec. 31; point of diversion is "stockwatering directly on spring located S. 1386 ft. W. 735 ft. from the N $\frac{1}{4}$ Cor. Sec. 33, T2N, R23E, SLB&M." The stockwatering use is for 140 cattle.

4. That Water User's Claim No. 2101 in the name of Union Land Company is disallowed and the right described therein awarded to the United States of America under Water User's Claim No. 2100 which is described as follows:

Stockwater directly on stream from point of stream's issuance, located in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 31, T3N, R13E, SLB&M, to point where stream leaves NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 30, T3N, R13W, SLB&M.

5. That Rodney Scofield has the right to the use of water under Water User's Claims Nos. 662 and 2465 for the watering of 1200 sheep.

6. That Water User's Claim No. 3026, in the name of William Allen is allowed as follows:

The source is Crouse Spring with a priority of 1870 for domestic and stockwatering purposes. The flow is 0.015 c.f.s. for domestic and incidental for stockwatering. The period of use is from January 1 to December 31. The extent of use is for three families and for stockwatering of 300 cattle, 130 sheep and 15 horses.

That the remainder of the protest filed by William Allen is dismissed.

7. That Claim No. 1022, as far as Zolph S. Calder is concerned,

shall be satisfied by and shall be entitled to use the first 5.0 second-feet of the natural flow of Pot Creek, measured at the Matt Warner Dam, during the irrigation season from May 1 to October 31 of each year; provided, however, that in the distribution of water under this order, the State Engineer may in his discretion retain the said first 5.0 second-feet in the Matt Warner Reservoir during any period when release therefrom would be impossible or inconvenient and may thereafter release the same to satisfy the above numbered right and claim as soon as it is possible and convenient.

That Claim No. 1019 shall be entitled, as far as Zeph S. Calder is concerned, to storage only during the period from October 31 of one year to May 1 of the year following and during said period is entitled to the first 5.0 second-feet of the natural flow of Pot Creek measured at the Matt Warner Dam; provided, however, that, in the distribution of water under this order, the State Engineer may order the installation of such measuring devices as may be necessary and may in his discretion retain the said 5.0 second-feet in the Matt Warner Reservoir during any part of the period from October 1 of one year to May 1 of the year following and may release the same as soon thereafter as is possible and convenient.

That if the said Matt Warner Reservoir fills and spills, all water spilled shall be first charged with satisfying the rights hereinabove mentioned in this paragraph during their respective period of use.

8. That A. K. Reynolds and the Red Canyon Lodge, Inc., have no right to the use of water from the Greendale Canal for irrigation purposes under Water Users Claims Nos. 2832, 2833 and 2834. That any and all rights to the use of water from sources which are traversed by the Greendale Canal arise below said canal and A. K. Reynolds and the Red Canyon

Lodge, Inc., have no demand upon said canal to satisfy their rights for irrigation purposes. A. K. Reynolds is entitled to the use of .25 c.f.s. of water from the Greendale Canal for fish culture purposes as provided for in the decree of this court in the case of Esther R. Glenn and Oscar Swett and Emma Swett, his wife, v. Adrian K. Reynolds, Civil No. 167.

9. That the point of diversion for Water User's Claim No. 1219 and proposed award in the name of Francis Felch is amended to read Township 2 North instead of Township 3 North.

10. That the United States of America has a prior right, under Water User's Claims Nos. 124, 142 and 143, to that of the Red Canyon Lodge, Inc., under Water User's Claim No. 627, for a total of 24.210 acre-feet of the sources covered by these claims and the United States may, at its discretion, take the entire quantity from Ross Spring.

11. That Svend Mogensen has the right to the use of water as set forth in the proposed determination under Water User's Claim No. 2757 from that portion of Trail Creek Spring area that is located on his property, described as follows:

Stockwater directly on spring area beginning at a point located N. 1000 feet, W. 200 feet from the E $\frac{1}{2}$ Cor. Sec. 23, T2N, R21E, S1B&M. Thence running N. 250 ft., thence W. 90 feet, thence S. 250 feet, thence E. 90 feet to point of beginning.

12. That the protest of Oscar Swett, Lewis Swett and Esther R. Glenn to Water User's Claim No. 63, in the name of the United States of America, is denied.

13. That the protests of Larsen Land, Livestock and Industries, a Utah Corporation, Lewis H. Larsen and Dorothy G. Larsen, Mrs. Frank Myers, Walter J. Myers, and Sylvan Arrowsmith are overruled and dismissed.

14. The rights to the use of water under Water User's Claims Nos. 265, 2716, 2718 and 2719 are affirmed in the name of the United States of America as owner thereof subject to the right of Lee S. Nebeker and Miranda Nebeker to the exclusive use and enjoyment of the

right for stockwatering purposes so long as they are holders of grazing permits on the public lands where the use is made. Except as herein provided for the protest of Lee S. and Miranda Nebeker is dismissed.

15. That the duty of water is fixed at 3 acre-feet per acre of land awarded a water right under said proposed determination and the periods of use for irrigation purposes are confirmed as set forth in the proposed determination. This is to be on an interlocutory basis and subject to any interested party petitioning the court to show why either the duty or the period of use should be modified.

16. That except as specifically modified by this order the said Proposed Determination of Water Rights as submitted herein by the State Engineer be, and the same is hereby confirmed as to all rights therein set forth.

17. That all other protests to said determination, both oral and written that are before the court on this matter, are hereby dismissed.

Dated this 25th day of September, 1964.

/s/ A. D. C. Platt
DISTRICT JUDGE